EASTERN DISTRICT OF NEW YORK			
MICHAEL MINEO,	Plaintiff,	DECLARATION OF JOHANA V. CASTRO, ESO.	
-against-	,	09 CV 2261 (JBW) (ALC)	
THE CITY OF NEW YORK, NEW YORK CIT OFFICER RICHARD KERN, individually and in official capacity as a New York City Police Offi	in his		
1	Defendants.		
	X		

JOHANA V. CASTRO, declares under penalty of perjury and pursuant to 28 U.S.C. § 1746 that the following statements are true and correct.

- 1. I am a Senior Counsel in the office of Michael A. Cardozo, Corporation Counsel of the City of New York, attorney for defendant City of New York. As such, I am familiar with the facts stated below and, as well, submit this declaration to place relevant documents on the record in support of defendant's motions *in limine*.
 - 2. In support of its motions, defendant submits the exhibits described below:
 - A. Annexed hereto as Exhibit "A" is a copy of excerpts from Plaintiff's deposition, which was taken on May 14, 2010.
 - B. Annexed hereto as Exhibit "B" is a copy of excerpts from Plaintiff's testimony in the proceeding People v. Kern et al., Indict. No. 10628/2008.
 - C. Annexed hereto as Exhibit "C" are copies of documents regarding plaintiff's warrants.

Dated:

New York, New York November 5, 2010

MICHAEL A. CARDOZO

Corporation Counsel of the City of New York Attorney for Defendant City of New York

100 Church Street

New York, New York 10007

(212)788-0976

By:

JOHANA V. CASTRO

Senior Counsel

Special Federal Litigation Division

EXHIBIT A

1	EASTERN DISTRICT OF NEW YOR	
2		X
	MICHAEL MINEO,	
3		PLAINTIFF,
4	-against-	Case No.
		09cv2291
5		
	THE CITY OF NEW YORK, NEW YO	
6	POLICE OFFICER RICHARD KERN	
-	and in his official capacity	
7	City Police Officer; NEW YOR	
8	OFFICER ALEX CRUZ, Individua official capacity as a New Y	
Q	officer; NEW YORK CITY POLICE	
9	ANDREW MORALES, Individually	
_	Official capacity as a New Y	
10	Police Officer, POLICE OFFIC	
	individually and in his offi	
11	as a New York City Police Of	
	CITY JOHN DOE POLICE OFFICER	
12	and number of whom are unknown	
	and in their official capaci	
13	New York City Police Officer	
14	CITY POLICE OFFICER JOE DOES	
7.4	police officers of the City the identity and number of w	
15	individually and in their of	ficial capacity
	of New York City Police Offi	cera
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		X
17	Date:	May 14, 2009
18	Time:	11:45 a.m.
19		
* -		
20	DEPOSITION of the	e Plaintiff, MICHAEL MINEO,
21	taken by the Defendants, purs	suant to a Court Order and to
22	the Federal Pulse of Civil D	rocedure, held at the office of
	one reactar raigs of civil Fr	tocedure, herd at the office of
23	Shafran & Mosley, P.C., 350 H	Fifth Avenue, New York,
2.4		
24	New York 10118, before Vaness	sa L. Kennedy, a Notary Public
25	of the State of New York.	
	an one peace of Man Toty.	

- Q. Immediately prior to jumping the turnstile, were
- 2 you doing any other type of illegal activity?
- 3 A. Yes, I was smoking marijuana.
- 4 Q. You knew on October 15, 2008 smoking marijuana is
- 5 illegal?
- 6 A. Yes.
- 7 Q. And you were smoking marijuana immediately before
- 8 you ran from the police, correct?
- 9 A. Correct.
- 10 Q. Mr. Mineo, one of the allegations and this is on
- 11 page fifteen of your Complaint, is an allegation there was
- 12 a delay and denial of medical treatment on that date in
- 13 question?
- 14 A. Yes.
- 15 Q. On October 15th of 2008?
- 16 A. Yes.
- 17 Q. Okay. Are you aware of that now that I've
- 18 mentioned that to you?
- 19 A. Not that you mentioned it. I'm aware because it
- 20 occurred. I remember from my remembrance.
- 21 Q. At any time on October 15, 2008, did you request
- 22 medical treatment from any officer?
- 23 A. Yes.
- Q. Who did you request medical treatment from?
- 25 A. Officer Kern and the officers that brought me

- 1 A. Sometimes. It depends.
- Q. During the time that you worked at
- 3 Jiggaman Tattoos, did you file any tax return?
- 4 A. No.
- 5 Q. Why not?
- 6 A. I didn't know I had to.
- 7 Q. How did you come to be employed at
- 8 Jiggaman Tattoos?
- 9 A. I just knew him from when I was homeless.
- 10 Q. You now who?
- 11 A. Jason.
- 12 Q. So he gave you a job there?
- 13 A. Yes.
- 14 Q. Prior to working at Jiggaman Tattoos, were you
- 15 working anywhere?
- 16 A. A bunch of different places.
- 17 Q. Where is that?
- 18 A. I couldn't go down the whole line.
- MR. JACKSON: As best you could.
- 20 A. Primo Cappuccino, in Penn Station. Popeyes, in
- 21 East New York.
- 22 Q. The Primo Cappuccino, that's located inside
- 23 Penn Station?
- 24 A. Yeah.
- 25 Q. Do you recall when you worked there?

- 1 A. No, I don't.
- Q. Did you get paid hourly rates, was it minimum
- 3 wage?
- 4 A. Yeah, I believe.
- 5 Q. While you were employed there, did you pay taxes
- 6 on that money?
- 7 A. I don't recall.
- 8 Q. Have you ever filed a tax return?
- 9 A. Not to my recollection. I don't remember.
- 10 Q. So we mentioned Popeyes, Primo Cappuccino,
- 11 anywhere else you've worked?
- 12 A. Pioneer Supermarkets, in Queens.
- 13 Q. When was that?
- 14 A. I don't remember the year.
- 15 Q. Do you recall how long you worked there?
- 16 A. No, sir.
- 17 Q. Do you recall what you did there for them?
- 18 A. I worked in the deli.
- 19 Q. Do you recall how much you were paid?
- 20 A. No, I don't.
- 21 Q. Do you recall how much or how long you worked
- 22 there?
- 23 A. I don't recall.
- Q. Where was the Pioneer Supermarket located?
- 25 A. 63rd, Rico Drive.

NEO 86

- 1 charges?
- 2 A. Yes.
- 3 Q. When was that?
- 4 A. 2000 -- I think it was 2009.
- 5 Q. Do you recall what you plead guilty to?
- 6 A. It was identity theft, I believe, and unlawful
- 7 use of a stolen credit card.
- 8 Q. Do you recall if that was a misdemeanor or a
- 9 felony?
- 10 A. I don't remember.
- 11 Q. Do you know what you were sentenced to as a
- 12 result of that plea?
- 13 A. Probation.
- 14 Q. For how long?
- 15 A. Four years.
- 16 Q. Who supervises that probation is it New York or
- 17 Pennsylvania?
- 18 A. Pennsylvania, but it was transferred to New York
- 19 because I don't have any family in Pennsylvania.
- Q. What was the name of your probation officer?
- 21 A. P.O. Lamatta (phonetic).
- Q. Where is that office located?
- 23 A. Downtown, Brooklyn.
- Q. Are there any specific conditions that you have
- 25 as a result of probation?

- 1 Q. You did speak to them?
- 2 Α. In the building, before I went to the trial.
- 3 Between October 16, 2008 and that time before you
- testified at trial, did you have any contact with them 4
- 5 during that period of time?
- 6 Α. No. No.
- 7 After October 15, 2008, did you email anyone or
- 8 twitter or Facebook, My Space, post, create any posts of
- 9 this incident?
- 10 Α. No, I didn't.
- 11 After October 15, 2008, were you ever arrested
- 12 again by the NYPD?
- 13 Α. Yes, I was arrested. I don't remember the date.
- 14 I was arrested crossing a train car.
- 15 Q. Does that mean from one car to the other?
- Yes, I was arrested sitting in a park and they 16 Α.
- 17 said I had a warrant for not showing up to court which is
- 18 for community service to show that I had a paper showing
- that I completed community service, so I had a paper for 19
- 20 that. I was locked up. I had to go to Rikers Island
- because I had to see the judge and came back that morning 21
- 22 and was released.
- 23 You were supposed to have shown proof to the
- court that you completed community service? 24
- 25 Α. Which I had the paper in my pocket.

- 1 Q. But you didn't show up to court on the right day?
- 2 A. I was going the next day. The day I got arrested
- 3 was the day I was supposed to show up for court, so that
- 4 was resolved and then I was arrested for crossing the train
- 5 cars.
- 6 Q. Do you recall when the arrest was in the park?
- 7 Do you recall the date on that?
- 8 A. No, I don't. I believe it was late summer;
- 9 September, August, September. They both occurred -- they
- 10 happened a few weeks apart from each other. I was
- 11 released. I didn't get no paperwork. They just told me
- 12 leave.
- 13 Q. With the riding between the train cars, did you
- 14 receive a summons, were you arrested?
- 15 A. I was arrested when I crossed the cars. I got
- lo out of the train they said "look, you crossed the cars we
- 17 are going to check if you have any warrants or anything."
- 18 They checked, they said "You have to come with us." I went
- 19 to central booking got fingerprinted, took pictures of me,
- 20 went through the whole system and they let me go.
- Q. What train was that?
- 22 A. The L train at Broadway junction.
- Q. Broadway junction, is that in Brooklyn?
- 24 A. Yes, Brooklyn.
- 25 Q. Prior to that incident, were you ever arrested

EXHIBIT B

SUPPRIME COURT OF THE STATE OF NEW YORK COUNTY OF KINGS. CRIMINAL TERM . PART IS THE PEOPLE OF THE STATE OF NEW YORK

- against -

RICHARD KERN, ALEX CRUZ, and ANUMER HORALES,

Defendante.

Indict No. 10628/2008

328 Jay Street Brooklyn, Hew York January 25, 2010

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HONORABLE ALAN D. MARRUS,

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A P P S A R A H C E S

OFFICE OF CHARLES HYNES, ESQ.
DISTRICT ATTORNEY, KINGS COUNTY
ALLOTTMEY TO THE People
OFFICE M. CURIL, ESQ.
JOFFREY FERDISCH, ESQ.
and ELIZABETH MCHIE, ESQ.,
Assistant District Attorneys.

JOHN D. PATTEN, MSQ. Attorney for the Defendant Richard Keyn, 30 Vesey Street, PM Suite, New York, New York 1980?

MORTH, LONGMORTH & CONDON, LLP. . Lighworth & Condon, LLP,
Attorneys for the Defendant Alex Crus,
111 John Street, Suita 660,
New York, New York 16038
By: STUART LORDON, ESQ.
and MICHAEL MARTINEZ, ESQ. RICHARD H B. MURHAY, KSQ. ALLOSTREY for Defendant Andrew Morales, 30 Years Rivect, PH Suits. New York, New York 10007

ERIC S. POLLYER and JUDITH BRUSCA. Official Court Reporters

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THE COURT | Before we begin the court proceedings, I have applications again from several media outlets for still and video photography of this session the of the applications actually is for the duration of

I will only consider an application on a dwily basis, because I need to know whether or not any watness has any objection to being photographed.

And I have asked the District Attorney whether or not the witness who testified last week, and the witness who is going to testify today had any objection And I was informed they did not which was a very important consideration for me

So for the record, do the People have any objection to any photography of this proceeding?

MR TURIS Dot for the cast witness, Your

THE ITEM? That's what I will by the without at a time

And I show the defense objected laws week to the photography. And I just want to know whether or not so far, based on what happened last week, there is any concern about the integrity of the proceedings as a result of the photography session that we had an Thus oday .

Proceedings

469

Mr. Patten?

MR. PATTEN: Judge, I supress my objection to the cameram in the courtroom. And same hawic objection I had the other day.

I will contedn, however, that it didn't seem to show any kind of discuptive activities by the part of the media. So --

THE COURT I would ask you to call at to my attention at any point of you feel there is a problem. because I ar very concerned there would be, and at this point I don't see one either. Which is very important, a very important consideration

Mr Murcay?

PR MIMPLAY I have no objection.

THE POURT And how about Mr Lendon?

MA CONTOCAL Aukin, Judgm, I ranew my Ajective to the application

But naving said that I agree with Mr. Pattern that there was no immorption that I was aware of at all

And it elemetrical become apparent is the future, we will tring it to the aptersion of the Court.

THE POURT: Them I will grant the application for the same facial so last week, that the media will have the right to re-rid the acosion under the riles that f enmounded cash week. They have to also in the same

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FaP

Michael Hinto - Guria - Direct

O Just for clarification, when you talk about a maxijuana cigar, was it a full entire cigar?

A. No, it wasn't. It was maybe anywhere from two to three inches long.

(Indicating)

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O So, where is in that you light this marijuana cigarette?

A I lit it up while I was walking And it went out.
Thad relit it in front of Wendy's.

Q And just describing where you were by the Wendy's, is there any physical attribute to the Wendy's as to where you were when you lit, tried to relight it?

A Yes, the Wendy's, there is an entrance door, and there is like a service door where they can bring products, like they bring the truck.

h was standing in front of the service door blocking the wind, because it was wind blowing, and I couldn't get my lighter to work.

0 Does there come a point in time as you were doing that, that your accention is directed to something?

A Yes. My co-worker LeShaun told me that there was police driving directly behind us.

O In response to you being told that, do you actually, do you look and see anything?

A Yes. I turned and looked back, and I saw a black

ESP

Hicknel Hineo - Guris - Direct 479
Impala with two people, and two officers in the Impala.

Q How could you tell that the individuals in the Impala were police officers?

A Because they were desired in uniform.

Q Upon secting them, where were they when you were standing by the service door?

A Oriving directly behind me From the service door

Q Did you do anything in response to seeing the officers?

A I walked off, and put the marijuana clip in my mouth, and inquested it I atm it.

Q New, after you did that, what happened next?

A I began to walk off.

And the officer that was in the passenger came out of the car and kept shouting, "New you, stop."

And 1 stopped.

Q Now just to clarify, you said he was in the passenger. He was in the passenger what?

A Of the black Impals.

Q So, that officer got out of the Impula?

A Yest.

0 And what happened then?

A He stopped me. And he said, "Where is the weed?"

And I replied, "I don't know what you are talking

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ESP

Michael Mineu - Ouria Direct 480

So he waid, 'Come on I still see it in the air "

It was smoke in the air. Because I had a clip lit.

So I told him, 'I don't have any marijuana.'

So, he went in my pockets. Pulled my things out,

So, he went in my pockets. Pulled my things our and checked my stuff, and put it back in my pocket.

9 What did you have in your pockets, Mr. Mineo?

A I had a keys. A set of keys for the shop. And I think about \$2 to get on the dollar van.

0 And at that point what happened next after that?

A After that, the driver of the Impala came out. And asked the passenger of the Impala, the one that scopped me initially and seked him. "Did you find in:

And he replied to him, "No "

Q Districts some a point on the when anybody else poined yourse. (, and the driver of the impals, and the passenger of the impals?

A Yes

O Who was that?

A Two other officers.

3 Did you see where they come from?

A They came from my left hand wide Pecause I was a lictle bit farther in front of the service door stea. I was more in front of it.

So they were corring to my left, no I selzeve trey wate coming from the widewalk on to the Kide of the Kendy's

Michael Mineo - Guria - Direct Where I was at.

3 And what happened once they arrived?

A Once they arrived, the driver of the Impair asked him again if he sound anything.

He said, "No. "

And he replied --

0 He asked who?

A Hs asked, the driver asked the passenger if he found anything.

And he cold him, "No."

And he exid, "Well, we will still lock him up."

Q At that point in time, Mr. Mineo, what if anything did you do?

A Iran.

O Now. you say you ran in what direction did you rus?

A Adress the etreet, bearing like towards the left to go into the Prospect Park train station.

C Prior to that day, Mr. Winso, had you ever been directed of convicted of a crime before?

A Yes

And what had you been arrested for before that day?

A Powerssion of marijuana. A gang aspault. And didentity thest. And credit card fraud.

Q Now, let we just back up. You had been accented for

(C P

845 P

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i		People - M. Rineo - Cross (ficados)	
2	A	¥wa.	
3	Q	Now, that was \$9.000 you had stolen;	
4	,0-14(£)		
5	^	Yes.	
6	· ·	You faced many years in 1911 for that	
7	ंब≆स्य त्राह	a't your	
A	۸	Yes.	
7	٥	At least govern years in join, correct?	
16	A	Yes.	
11	٥	Ye was a grand lacerny case, eleptiv	
12	A	th han,	
. 3	o	You have to ensure yes or no.	
14		Yos,	ļ
15	٥	It was we identity cheft case; wasn't it?	
16	*	Yes,	
1 '	0	That is what you were charged with therm;	
18	corract,		1
19	A	Yes.	
20	C	How many years probation you're on;	
21	thre#?		
27	٨	four.	Í
2.1	ø	feur years?	-
24	A	Four,	
25	Ď.	Did you plead to a follow or a	- !

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:		Prople - M. Mineo - Cross (London)	
	tresu ya.	its; correct?	
3	\	ίου.	
•		So one money include for you say we have	
1	# *Estant	for your arrest?	
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,	Ų ·	Here you sware you had list warrage in	
Ħ	Pennsylva	and or did you nest larged about les	
9	۸	No. I knew I had a worrame,	
:0	ō	Mph aights hon cent mich its	i
11	٥	Secause I ran.	İ
12	১	Why did you run?	
13	λ	Because I ran. That is my explanation; t	
14	ran.		İ
15	o	You like to run; don't you?	1
16	λ	If that is what you want to way, yeah,	i
1)	٥	You didn't want to accept your	
4.	reapons,b)	Dity: did you?	
3.9	Å	Yes.	
i u	2	Yes, you did not went to accept your	
21	raspunsibi.	lity: cosmett?	
2.2	λ	^y cs.	
23	0	Now, after this case occurred on	
24	October 15t	h of 2008, after this case did you then	
25	have an opp	ortunity to go back to Pennsylvania and	
6	clear up th	At warrant?	
•		я	l

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	People - H. Hinec - Cruse (fonces)	
١.	Rife a misdoreanor	
)	With four years probation?	
1	Yes.	
:	Did the Brooklyn FA's nifice belo you in	
ira	that earters	
	old they put you ir touch with the right	
uter	and help you vecate the warrant in that	
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	Bud your civil .awyers help you weeken	
I an'	is that case?	ì
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	footer suing for money?	ļ
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	Frank you. 1 Appreciate that	
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1		People - M. Mines - Cross (Landon)
2		¥ቀቋ.
3	ū	Did they help you reactive the wairant you
*	have in I	Pennsylvania?
	٨	No. I went to Pennsylvania and resolved
6		because I was in the modia, they knew where
7	i was ac.	It was either have them come pick me up in
à	New York	or go resolve it on my own.
,	•	You didn't want to be on the stand and
16	have gone.	the errest you and the witness shand for
11	paring ye	open Watrant: did you:
1.	٨	Me .
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34	WATERNES	
15	4	Mr. one rold me in take date of coal
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*	Pennsylvan.	. 4 ?
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20	5	Rhen and you go number
21	٨	This was sort year Summerties
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. 1	ishe.	
4	٥	Did to go can't by yourself.
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	*	but you goes may see syl arts which will be
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EXHIBIT C

Personal Information

55#: 099-70-4057

Place of Employment:

THE COMMONWEALTH OF PENNSYLVANIA

Candagier be fa Smeriffs Office

To the Sheriff of Lancaster County, GREETING: You are hereby commanded that you take MICHAEL JUSTIN, MINEO 427 MANOR ST. LANCASTER, PA 17603 if HE be found in your Bailiwick, and HIM safety keep so that you have HIS body before our Judges, at Lancaster, at our County Court of Common Pleas-Criminal Div., There to be held forthwith, to answer to a certain Bill of Indicament 2096CM2004 ACCESS DEVICE ISSD TO ANOTHER WHO DID NOT AUTH UIMINGAHI 2 Counts there pending against. HIM. And have you then there this Writ. Witness the HON, M.A. GEORGELIS, P. J. at Lancaster, the 29th day of October, in the year of our Lord, 2004 I, hereby deputize any Peace Officer to serve this Bench Warrant according to law, Witness my hand this day of Shartff of Lancouter County ROR SELF Bondsman: Prosecutor: CPL KIMBERLY E. GEYER Description: Height: DOB: 09/17/1984 Weight: Eyes: Color: HISPANIC Hair: Distinguishing Features: Known Allases:

PA DRIVER:

SCRN: MENM NEW YORK TY POLICE DEPARTMENT DATE: 10/16/08
TERM: B204 BOOKING/ARRAIGNMENT/DISPOSITION INQUIRY SYSTEM TIME: 12:25:37

ARREST INFORMATION

TIME: 19:29 DATE: 08/30/07 PCT: 073 RET DATE: A/O EXC:

ARREST LOC: 432 MARION STREET
NUM OF ASSOC: ARREST ID'S:

WEAPON POSS/USED: TOP CHARGE METHOD:

CHARGE INFO: ATT LAW SEC SUB CLS TYPE CTS DESCRIPTION
TOP CHARGE--> | N | LOC | 000 00 0V | V | 0 | 1 | VIO LOC/LAW VIO

NARRATIVE: AT T/P/O DEFT WAS OBSERVED MAKING UNNECESSARY NOIS E. DEFT WAS FOUND TO HAVE TWO ACTIVE WARRANTS. DOC KET # 2004QNO47651 AND 2005NY059699.

VEHICLE: MAKE: YR: COLOR:

PROPERTY VOUCHERS: 1) NO: CMD: VAL: TYP:

2) NO: CMD: VAL: TYP: 3) NO: CMD: VAL: TYP:

PF3/PF15 - RETURN PF11/PF23 - PRINTER SELECTION PF12/PF24 - LOGOFF

Warrant of Arrest

CRIMINAL COURT OF THE CITY OF NEW YORK

DATE OF ISSUANCE OF THIS WARRANT: 8/13/2007

Name of Delendars

MINEO, MICHAEL

Offerme Chargest: AC10-125(b)(00)V

SAP-W

Return Part: SAP-W

County: KINGS Docket No: 2007SK098053 OCA No: A2007229758

IN THE NAME OF THE PEOPLE OF TE OF NEW YORK:

TO ANY POLICE OFFICER WHOSE GEOGRAPHICS OF RACES EITHER THE PLACE WHERE THE OFFENSE CHARGED WAS ALLEGEDLY CONSTRUCTION OF THE ABOVE-NAMED DEFENDANT BY THE FILING THERWITH OF AN ACCUSAORY OF THE ABOVE DOCUST NUMBER CHARGING THE DEFENDANT WITH THE ABOVE-NAMED OFFENDANT THE ABOVE DOCUST NUMBER CHARGING THE DEFENDANT WITH THE ABOVE-NAMED OFFENDANT THE DEFENDANT NOT HAVING BEEN ABOVE DIDON SUCH ACCUSATORY WITH THE ABOVE-NAMED OFFENSE AND THE DEFENDANT NOT HAVING BEEN ARRAIGNED UPON SUCH ACCUSATORY INSTRUMENT AND NOT HAVING COME UNDER THE CONTROL OF THE COURT WITH RESPOCT THERTO, AND A JUDGE OF THIS COURT, WHOSE NAME IS SUISCE BELOW, FINDING THAT SUCH ACCUSATORY INSTRUMENT IS SUFFICIENT ON ITS FACE AND BEING SATISFIED THAT THE DEFENDANT WILL NOT RESPOND TO A BUMEMONS.

AND, PURSUANT TO CRIMINAL PRECEDURE LAW ARTICLE 120, THE AFORESAID JUDGE OF THIS COURT HAVING ORDERED THE ISSUANCE OF A WARRANT OF ARREST.

NOW THEREFORE, YOU ARE DIRECTED TO TAKE INTO CUSTODY THE ABOVE-NAMED DEFENDANT WHO IS PARTICULARLY DESCRIBED BELOW AND, EXCEPT AS OTHERWISE PRESCRIBED IN CRIMINAL COLDURE LAW 120.90, FOLLOWING SUCH ARREST YOU MUST WITHOUT UNDEED BY PERFORM ALL FILE OF AND OTHER PRELIMINARY POLICE DUTIES REQUIRED IN THE PARICULAR CA.

BEFORE THIS COURT FOR THE PURPOSE OF ARRAIGNMENT UPON THE ACCUSATORY!

CARLE BROWN

CARLE, BROWN 8 UPSCRIPTION OF ISSUING JUDGE

I certify that this instrument constitutes a true copy of the warrant of arrest issued and subscribed by the above-named judge of the criminal court of the city of New York.

> WILLIAM B. ETHERHOOS, CHIEF CLERK CIMINAL COURT, CITY OF NEW YORK

	DEFENDANT INFORMATION	
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